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## CITATIONS





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# In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 262

MONTANA-DAKOTA UTILITIES CO., PETITIONER

*v.*

FEDERAL POWER COMMISSION ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

## BRIEF FOR FEDERAL POWER COMMISSION IN OPPOSITION

### OPINIONS BELOW

The opinion of the Court of Appeals for the Eighth Circuit (R. IV, 5–26) is not yet officially reported. The opinions of the Federal Power Commission (R. I, 119–145, 171–179) are reported at 64 P. U. R. (N. S.) 11, and at 68 P. U. R. (N. S.) 52.

### JURISDICTION

The judgment of the Court of Appeals for the Eighth Circuit was entered on August 4, 1948 (R. IV, 26). The petition for a writ of certiorari was filed on September 4, 1948. The jurisdiction

of this Court is invoked under Section 19 (b) of the Natural Gas Act and under 28 U. S. C. 1254 (1).

## QUESTIONS PRESENTED

1. Whether the common carrier obligations, imposed by Section 28 of the Leasing Act of 1920, as amended, as a condition to granting rights-of-way across government-owned lands to natural gas pipe-line companies, may be discharged by the purchase of natural gas.

2. Whether the Federal Power Commission (Commission) may require a natural gas pipe-line company to file prescribed system-wide rates for the interstate transportation of natural gas, coextensive with its common carrier obligations assumed under the Leasing Act, where the company had failed to comply with Section 4 (c) of the Natural Gas Act requiring all rates for such transportation to be filed with the Commission.

3. Whether, in the circumstances here involved, the provisions of the rate schedule prescribed by the Commission were reasonable.

## STATUTES INVOLVED

The pertinent provisions of the Natural Gas Act (52 Stat. 821, 15 U. S. C. 717 *et seq.*) and of the Leasing Act of 1920, as amended (41 Stat. 437, 449, as amended by 49 Stat. 678, 30 U. S. C. 185) are set forth in the Appendix, *infra*, pp. 17–24.

STATEMENT

Petitioner, Montana-Dakota Utilities Company (Montana-Dakota) in addition to other utility operations, is engaged extensively in the production, interstate transmission, and local distribution of natural gas (R. I, 121). While its natural-gas operations are located in four separate areas, its Baker-Bowdoin system alone transports natural gas and is an integrated interconnected interstate pipe-line system located in the States of Montana, North and South Dakota[1] (R. I, 121). Natural gas, transported in this system, comes from the Bowdoin field in Montana, and from the Baker field in Montana and North Dakota. The system extends from points in the vicinity of Malta, Montana, and Williston, North Dakota, on the north, to Rapid City, South Dakota, on the south, and from Miles City, Montana, on the west, to Bismarck, North Dakota, on the east. The natural gas transported through such system lines is subsequently distributed through local systems in 19 communities in Montana, 17 communities in North Dakota, and 11 communities in South Dakota. (R. I, 121, Pet. Br. App. opp. p. 20.)[2]

[1] Petitioner is admittedly a natural-gas company within the meaning of the Natural Gas Act, since it is "engaged in the transportation of natural gas in interstate commerce." It holds a certificate of public convenience and necessity issued by the Commission on April 6, 1943. 3 F. P. C. 968.

[2] Petitioner makes no sale of natural gas at wholesale to any other gas distributing company.

With the exception of its pipe line extending easterly from Cabin Creek compressor station in Montana to Bismarck, North Dakota,[2] all of petitioner's transmission pipe lines in the Baker-Bowdoin system were constructed in some part upon rights-of-way across government lands. These grants of rights-of-way were issued by the Secretary of Interior pursuant to Section 28 of the Leasing Act, Appendix, *infra,* pp. 23–24, which permits such grants upon the condition that the pipe lines be constructed, operated and maintained as common carriers. (R. I, 122.)

On October 27, 1933, petitioner filed with the Department of Interior a rate schedule for the interstate transportation of gas through its Black Hills line extending from its Baker, Montana, compressor station to Rapid City, South Dakota (R. I, 123; II, 595). The Department after receiving a complaint and holding a hearing thereon, held on September 10, 1936, that the rates were excessive, unreasonable, and unduly preferential and ordered the filing of reasonable, nondiscriminatory rates (R. II, 537–557). Petitioner on March 2, 1937, filed a new rate schedule

[2] This line was originally constructed across government-owned lands but no request for right-of-way was filed. Petitioner subsequently removed its pipe line from the government land and relaid it on privately owned right-of-way. The Department of Interior has accepted $75 in full settlement for the unlawful occupancy of this land. (R. I, 122.)

with the Department of Interior for its Black Hills Line (R. I, 124). On August 24, 1938, petitioner filed with the Commission the two identical rate schedules ("Montana-Dakota Utilities Co. Rate Schedules FPC Nos. 3–G and 4–G") (R. II, 577–587, 595–603) which had heretofore been filed with the Interior Department. According to their terms, these schedules had become effective October 27, 1933, and March 2, 1937, respectively (R. I, 124).

On December 6, 1941, Mondakota Development Company, the predecessor of Mondakota Gas Company (Mondakota) filed a complaint with the Commission (R. I, 2–18) alleging that petitioner's Rate Schedules 3–G and 4–G were "unduly discriminatory, unreasonable and unjust" (R. I, 4) and praying, *inter alia*, that petitioner be required to transport Mondakota's gas without discrimination as required by Section 28 of the Leasing Act and that the Commission determine just and reasonable rates (R. I, 5–6). On July 7, 1942, the Commission, on its own motion instituted a general investigation into petitioner's rates, charges and practices (R. I, 100–103). These proceedings were consolidated for purposes of hearing (R. I, 103).

After a hearing was held, the Commission on March 22, 1946, found the rates and charges fixed by petitioner's Rate Schedules 3–G and 4–G to be unreasonable and unduly discrimina-

tory (R. I, 129–133, 139–140). It further found that petitioner had a statutory obligation under Section 28 of the Leasing Act to maintain and operate all pipe lines in its Baker-Bowdoin system as a common carrier, and that the rates for the interstate transportation there involved must under Section 4 (c) of the Natural Gas Act, Appendix, *infra,* p. 18, be filed with the Commission (R. I, 128–129, 130). But in light of petitioner's "well defined purpose of defeating all attempts to require it to perform its common carrier duty" (R. I, 133–134), the Commission, instead of leaving "the preparation and filing of new rate schedules to be performed by the management," as is usually done (R. I, 133), prescribed the rate together with some related provisions of a new rate schedule for the common carrier transportation of natural gas through petitioner's Baker-Bowdoin system and required petitioner to file such schedule within a reasonable time to supersede Rate Schedules 3–G and 4–G (R. I, 134, 140–141, 141–145).[4]

[4] The Commission, recognizing that additional provisions were desirable, left to petitioner the discretion to formulate provisions dealing with: "Application for Service (including procedure for periodic revision), Quality of gas, including appropriate provisions regarding (1) extraction of hydrocarbons, and (2) merchantability of the gas, Establishment of Credit, Monthly Statement, Payments, Time of Beginning Service, Suspension of Service, Definition of Operating Division for Determination of Billing Demand, Title to Gas, Force Majeure, Term for which transportation is to be provided" (R. I, 145).

Upon review pursuant to petitioner's application therefor,[5] the court below rejected the numerous objections raised by petitioner and affirmed the Commission's order (R. IV, 5–26). It held, in so far as here pertinent, that petitioner, having been granted rights-of-way over government land pursuant to Section 28 of the Leasing Act, thereby became a statutory common carrier of natural gas and hence that its rates for such transportation are subject to the Commission's jurisdiction under the Natural Gas Act (R. IV, 11–12). It further held that the Commission properly prescribed rates for petitioner's Baker-Bowdoin system. In this connection, the court pointed out that Section 4 (c) of the Natural Gas Act, required every natural-gas company to file with the Commission schedules of all rates and charges for any transportation subject to the Commission's jurisdiction (R. IV, 16) and commented that petitioner "cannot now add to or subtract from the provisions of the statute nor rely upon its own failure to comply with the pre-

[5] Petitioner on April 22, 1946, filed a petition for rehearing (R. I, 145–167) which the Commission granted in part (R. I, 168–169). After further hearings, the Commission on January 28, 1947, affirmed its prior order (R. I, 171–180). Upon the partial denial of the application for rehearing, petitioner filed a petition for review in the Court of Appeals for the Eighth Circuit (R. I, 375–385), which stayed these proceedings pending conclusion of the rehearing (R. I, 385–387). When the rehearing was concluded, petitioner on March 24, 1947, filed a second petition for review (R. I, 389–438), which the court below consolidated with the first petition (R. I, 440).

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scribed requirements of Congress" (R. IV, 10). The court finally held that the prescribed rates were neither arbitrary nor confiscatory (R. IV, 19–20), and rejected as without substance petitioner's objections to those provisions of the schedule relating to the delivery of gas to the shipper's customers as they needed it and the requirement that such transportation service should be equal, in all ways, to petitioner's firm deliveries (R. IV, 21).

## ARGUMENT

The Commission order here involved requires petitioner, a statutory common carrier under Section 28 of the Leasing Act (Appendix, *infra*, pp. 23–24), to file schedules containing prescribed system-wide rates for the common carriage of natural gas in interstate commerce. Petitioner's claim that the order and rates prescribed by the Commission are invalid is predicated in this Court upon three of the approximately 30 grounds urged below in support of that contention. The rejection by the court below of these grounds, together with the others there advanced, was clearly correct, and further review by this Court is unwarranted.

1. Petitioner, relying on *The Pipe Line Cases*, 234 U. S. 548, contends that it is under no obligation to transport the gas of others since, it claims, it discharges its common carrier obligation assumed under Section 28 of the Leasing

Act, by the common purchase of natural gas. These cases, however, hold only that a pipeline company which transports purchased oil over its interstate lines is a common carrier under the Interstate Commerce Act, as amended. A pipe-line company which purchases oil is not thereby relieved of common carrier obligation; instead, it becomes obligated to act as a common carrier, to transport the oil of others and to file schedules of rates and charges for such transportation. 234 U. S. at 558, 561.[6] *Valvoline Oil Company* v. *United States,* 308 U. S. 141; *Champlin Rfg. Co.* v. *United States,* 329 U. S. 29. Far from supporting petitioner's position, *The Pipe Line Cases* make it clear that common carrier obligations may not be discharged by common purchases.

Read in the light of *The Pipe Line Cases,* Section 28 of the Leasing Act plainly imposed an obligation on petitioner to transport the natural gas of others. Under that Act rights-of-way through public lands for pipe-line purposes may be granted upon the express condition that pipe lines be operated "as common carriers and shall accept, convey, transport, or purchase without discrimination oil or natural gas * * *." See Appendix, p. 23, *infra.* The Department of Interior so read Section 28 in its Order of September 10, 1936,

[6] Indeed, the very purpose of the Hepburn Act of 1906 (34 Stat. 584) involved in *The Pipe Line Cases* was to break the monopoly over the means of transportation, which had been used to force producers to sell oil at terms dictated by pipe-line operators. See 234 U. S. at 559.

dealing with petitioner's obligation under the Act (*supra*, p. 4), where it pointed out that "the grantee of the right of way is bound to operate as a transportation company" (R. II, 556).[7] See S. Rep. No. 1158, 74th Cong., 1st sess., p. 5; 79 Cong. Rec. 12076–7 (letter from Secretary of Interior Ickes recommending 1935 Leasing Act amendments). This accords with the earlier stipulation entered into between the Interior Department and petitioner, in which the latter expressly consented and agreed "that its pipe line shall be constructed, operated, and maintained as a common carrier" (R. III, 653), and also with the endorsements on petitioner's requests for rights-of-way, where petitioner certified that "said pipe line was or is to be constructed, maintained, and operated as a common carrier or a common purchaser of natural gas" (R. III, 655; Tr. 1595–6). See, also, Section 2 (r) of the Standard Gas Lease (R. III, 770, 778; 43 C. F. R. 192.28, p. 424) covering many parcels of land which petitioner operates (Tr. 1834, 1924).

2. Petitioner, claiming that the Commission has only revisory authority over rates and hence is without power to act in the absence of filed

[7] The order concluded by giving petitioner "60 days to submit a new tariff which shall be reasonable and nondiscriminatory, failing which the case will be referred to the Attorney General with a recommendation that he bring suit to cancel the pipe line rights of way heretofore granted [petitioner]" (R. II, 557).

rates, further contends that the Commission exceeded its power in prescribing a system-wide rate for its pipe lines coextensive with its common carrier obligations (Pet. 10–12). But this contention, based solely on petitioner's "own failure to comply with the prescribed requirements of Congress" (R. IV, 16), is likewise without merit. Not only is the Commission authorized by Section 5 (a) of the Natural Gas Act, Appendix *infra*, pp. 20–21, to order that petitioner's filed rates be reduced to just and reasonable levels, but also it is authorized by Section 4 (c) of the Act, Appendix, *infra*, p. 18, to require the filing of all rates for interstate transportation of natural gas,* an obligation which petitioner, although engaged in interstate commerce with a system-wide common carrier obligation, has undeniably failed to discharge. Accordingly, the Commission, at the same time that it ordered petitioner to reduce its filed rates, could have issued an order requiring petitioner to file reasonable rate schedules for the other portions of its common carrier system. In other cases where it issued such orders, the Commission's usual practice has been to leave the prepara-

*By its Order No. 53 of July 5, 1938, 3 Fed. Reg. 1694, the Commission provided that all schedules covering deliveries of natural gas in Montana, North Dakota, and South Dakota and certain other states should be filed not later than August 22, 1938, and by Part 54 of its Provisional Rules of Practice and Regulations (3 Fed. Reg. 1687–1688), it specified the form in which such schedules should be filed.

tion and filing of new rate schedules to the pipe-line company (R. I, 133). These rate schedules, when filed, would be examined by the Commission which would, if necessary, hold further hearings to determine the reasonableness of these proposals, and by further order, require appropriate adjustments. In the instant case, however, since the Commission already had the pertinent rate information before it, and since as the Commission noted, "[petitioner] has persistently maintained a well-defined purpose of defeating all attempts to require it to perform its common carrier duty" (R. I, 133–134),* the Commission, instead of following its usual practice of dividing the proceeding into two steps, undertook to dispose of the entire matter in one order. Accordingly, the Commission ordered petitioner to file schedules of transportation rates for its pipe-line system as required by Section 4 (c) of the Act and prescribed the system-wide rates which it found to be just and reasonable. In these circumstances, such simultaneous disposition of the entire problem confronting the Commission was

*The Commission's opinion continues: "Indeed, counsel's brief for * * * [petitioner] states that: "It has, of course, been apparent throughout this proceeding that the * * * [petitioner] has opposed the granting of a tariff to Mondakota Development Company or to Mondakota Gas Company because of the effect which such a tariff might have on the public utility business of * * * [petitioner]. The pipe lines of * * * [petitioner] were not constructed for the purpose of carrying on a transportation business" (R. I, 134).

entirely practical and lawful. Cf. *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, 584–585.

3. As to the rate schedule itself, petitioner does not in this Court attack the rates set, nor does it claim that they will not yield a fair return.[10] Instead, it urges that the provisions that common carrier service be in all ways equal to its own firm deliveries (R. I, 143) and that gas be delivered to a shipper's customers as they need it (R. I, 142) impose requirements beyond ordinary common carrier service. The effect of these provisions, petitioner contends, is to require it to perform the public utility service of furnishing shipper's customers with uninterrupted deliveries of gas, and to store shipper's gas if its customers are not ready to take it when it reaches its destination (Pet. 13–14).

(a) These contentions ignore the basic distinction between the transportation of natural gas and the transportation of other commodities by rail, to which petitioner analogizes its carrier obligations (Pet. 14). Natural gas is a fungible commodity and the exact gas tendered by a shipper cannot be followed through the pipe line. Gas storage in the pipe line is an inherent char-

[10] If petitioner fails to earn a reasonable return under the prescribed rates, it is always at liberty to file new schedules subject to the Commission's approval. See Section 4 (e) of the Natural Gas Act, Appendix, *infra*, pp. 19–20.

acteristic of gas transportation, and further, there can be no exact balance between input and deliveries of a pipe line, either as a whole or as regards individual customers. Indeed, petitioner in its own Schedules 3–G and 4–G apparently so understood the character of natural gas transportation, for it there undertook to continue supplying gas to the shipper's customers for 24 hours after the failure of the shipper to supply gas at the point of origin (R. II, 581, 599). In contrast, the Commission did not require petitioner to make delivery beyond the amount of gas received from the shipper for transportation (R. I, 145, Pet. 13). Moreover, not only did the Commission permit petitioner to include in the rate schedule a reasonable charge for "Suspension of Service," to offset the costs of such storage (R. IV, 21), but it also gave petitioner broad leeway in dealing with this problem by permitting petitioner itself to formulate provisions relating to "Time of Beginning Service" and "Term for which Transportation is to be provided" (R. I, 145). *Supra*, p. 6 fn. 4.

(b) In addition, the Commission, in ordering that the common carrier service be equal to petitioner's own firm deliveries, sought to counterbalance petitioner's natural tendency to favor its own consumers. Cf. *United States* v. *Delaware & Hudson Co.*, 213 U. S. 366; *Interstate Commerce Commission* v. *Delaware, Lackawanna & Western R. R. Co.*, 220 U. S. 235; *United*

*States* v. *Lehigh Valley R. R. Co.*, 220 U. S. 257. This requirement is clearly valid, for although petitioner urges that its system has been constructed as a natural gas public utility (Pet. 14), that use of petitioner's system is secondary to its common carrier obligation which it assumed as a condition of the grant of right-of-way through government land for its pipe line. The Commission might therefore have required that the common carrier service not merely be equal to, but indeed be accorded priority over, petitioner's firm deliveries. In these circumstances, requiring that the common carrier service be equal to petitioner's firm deliveries clearly does not give rise to a sound basis for attack on the validity of the Commission's order.

## CONCLUSION

The decision below is correct, and there is no conflict of decisions. We respectfully submit that the petition for certiorari should be denied.

PHILIP B. PERLMAN,
*Solicitor General.*

H. G. MORISON,
*Assistant Attorney General.*

PAUL A. SWEENEY,
MELVIN RICHTER,
*Attorneys.*

BRADFORD ROSS,
*General Counsel.*

WILLIAM S. TARVER,
*Assistant General Counsel.*

LAMBERT MCALLISTER,
*Special Counsel.*

S. W. JENSCH,
*Attorney.*
*Federal Power Commission.*

OCTOBER 1948.

## APPENDIX

1. The pertinent provisions of the Natural Gas Act, 52 Stat. 821, 15 U. S. C. 717 *et seq.*, read as follows:

> Section 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.
>
> (b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.
>
> * * * * *
>
> Sec. 4. (a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all

rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every natural-gas company shall file with the Commission, within such time (not less than sixty days from the date this Act takes effect) and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection, schedules showing all rates and charges for any transportation or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any natural-gas company in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public in-

spection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, or State commission, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: *Provided,* That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be

proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible.

Sec. 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commis-

sion, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural-gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

* * * * *

Sec. 19. * * *

(b) Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court

a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the

Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

2. The pertinent provision of the Leasing Act of 1920, as amended (41 Stat. 437, 449, as amended by 49 Stat. 678, 30 U. S. C. 185), reads as follows:

> Sec. 28. That rights-of-way through the public lands, including the forest reserves of the United States, may be granted by the Secretary of Interior for pipe-line purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in section 1 of this Act, to the extent of the ground occupied by the said pipe line and twenty-five feet on each side of the same under such regulations and conditions as to survey, location, application, and use as may be prescribed by the Secretary of the Interior and upon the express condition that such pipe lines shall be constructed, operated, and maintained as common carriers and shall accept, convey, transport, or purchase without discrimination, oil or natural gas produced from Government lands in the vicinity of the pipe line in such proportionate amounts as the Secretary of the Interior may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine to be reasonable: *Provided,* That the Government shall in express terms reserve and shall provide in every lease of oil lands hereunder that the lessee, assignee, or beneficiary, if owner, or operator or owner of a controlling interest in any pipe line or of any company operating the same which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates

and without discrimination accept and convey the oil of the Government or of any citizen or company not the owner of any pipe line, operating a lease or purchasing gas or oil under the provisions of this Act: *Provided further,* That no right-of-way shall hereafter be granted over said lands for the transportation of oil or natural gas except under and subject to the provisions, limitations, and conditions of this section. Failure to comply with the provisions of this section or the regulations and conditions prescribed by the Secretary of the Interior shall be ground for forfeiture of the grant by the United States district court for the district in which the property, or some part thereof, is located in an appropriate proceeding.

U. S. GOVERNMENT PRINTING OFFICE: 1949